

MSC Notice 2001-25

NATIONAL INSTRUMENT 55-102, FORMS 55-102FI, 55-102F2, 55-102F3, 55-102F4, 55-102F5 AND 55-102F6, COMPANION POLICY 55-102CP

SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI)

Notice of Rule and Policy

The Manitoba Securities Commission (the "Commission") has implemented National Instrument 55-102 *System or Electronic Disclosure by Insiders* (SEDI) (the "National Instrument"), Forms 55-102FI, 55-102F2, 55-102F3, 55-102F4, 55-102F5 and 55-102F6 (the "Forms") and Companion Policy 55-102CP (the "Companion Policy"). In this Notice, the National Instrument, the Forms and the Policy are referred to collectively as the "Instruments".

The National Instrument, together with the Forms, has been enacted as a rule in each of Alberta, British Columbia, Ontario, and Quebec and is expected to be enacted as a rule in Newfoundland and Nova Scotia, as a Commission regulation in Saskatchewan and as a policy in Quebec, these being all of the jurisdictions with insider reporting requirements. The Companion Policy has been, or is expected to be, adopted as a policy in each of these jurisdictions.

The CSA published drafts of the National Instrument (the "Draft Instrument"), the Forms (the "Draft Forms") and the Companion Policy (the "Draft Policy") in June 2000 (collectively the "Draft Instruments").¹

The CSA comment period on the Draft Instruments ended on September 14, 2000. The CSA received eight submissions in respect of the Draft Instruments. The comments provided in these submissions have been considered by the CSA and the final versions of the National Instrument, Forms and Companion Policy being published with this Notice reflect the decisions of the CSA in this regard. Appendix A to this Notice lists the commentators on the Draft Instruments and Appendix B to this Notice provides a summary of the public comments received and the responses of the CSA.

Substance and Purpose of the National Instrument

The System for Electronic Disclosure by Insiders known as SEDI will facilitate filing and public dissemination of insider reports in electronic format through an Internet web site (www.sedi.ca). The rules and policies governing the electronic filing of insider reports through SEDI are set forth in the Instruments.

¹ In Manitoba, the draft was published at The Manitoba Securities Commission Internet website <http://www.msc.gov.mb.ca>.

The National Instrument defines "SEDI issuers" to mean reporting issuers, other than mutual funds, that are required to file disclosure documents in electronic format through SEDAR², and provides that insiders of these SEDI issuers are required to file their insider reports in electronic format through SEDI. To facilitate electronic filing of insider reports, the National Instrument also provides that SEDI issuers are required to file certain information electronically through SEDI. Insiders of reporting issuers that do not file their disclosure documentation in SEDAR will continue to file insider reports in paper format.

By filing an insider report in SEDI, an insider will satisfy the requirements of the securities legislation of all CSA jurisdictions that have insider reporting requirements. Insiders are currently required to file separately by paper or facsimile in each applicable jurisdiction. As well, electronic filing of insider reports will significantly enhance public dissemination of the information disclosed in these reports.

Summary of National Instrument and Changes to National Instrument

This section summarizes the National Instrument and describes the principal changes made in the National Instrument from the Draft Instrument. As the changes to the National Instrument from the Draft Instrument are not material, the National Instrument is not subject to a further comment period.

Insider Profiles

Before any insider reports may be filed by or on behalf of an insider in SEDI, an insider profile containing information identifying the insider and the insider's relationship to one or more SEDI issuers must be filed in electronic format by or on behalf of the insider³. The information required to be provided in the insider profile is prescribed by Form 55-102FI and consists principally of the information required to be included in the existing paper form of insider report that typically would not change as a result of changes in the insider's security holdings. Thereafter, the insider will be required to file an amended insider profile in SEDI format within 10 days if there is a change in the insider's name or the insider's relationship to a SEDI issuer, or if the insider ceases to be an insider of a SEDI issuer, as disclosed in the insider's most recently filed insider profile. In the case of a change in any other information disclosed in the insider's most recently filed insider profile, an amended insider profile will be required at the time of the insider's next SEDI filing. This represents a change from the Draft Instrument, which required an insider to file an amended insider profile in SEDI format within 10 days following any change in the information disclosed in the insider's profile.

² SEDAR is the acronym for System Electronic Document Analysis and Retrieval, the computer system implemented by CSA to facilitate electronic filing of disclosure documents under Canadian securities legislation.

³ In order to access SEDI to make a filing, an individual will be required to register with the system operator as a SEDI user. See "User Registration" below.

Insider Reports

Once an insider profile has been filed in SEDI, insider reports may be filed electronically by or on behalf of the profiled insider. The information required to be included in an insider report filed electronically is prescribed in Form 55-102F2. Insider reports filed in SEDI format will contain information substantially similar to that contained in the existing paper form of insider report, except for the addition of a separate section for third party derivatives to facilitate insider reporting of trades in exchange-traded or over-the-counter options or other derivatives.

Since the reports will be filed as data, and prepared within the system, SEDI will be able to pre-populate certain form information (e.g. opening balances of securities held), automatically perform certain calculations (e.g. closing securities balances) and perform various edit checks (e.g. ensure all required fields have been completed with valid data) prior to allowing transmission of the completed online report through SEDI. It is expected that this function will significantly reduce the number of deficient insider reports filed.

Securities legislation in several CSA jurisdictions, including Manitoba, currently requires insiders to report their trades within 10 days after the date of the trade. Securities legislation in other jurisdictions, such as British Columbia, requires insiders to report their trades within 10 days after the end of the month in which the trade occurs. Upon implementation of the National Instrument, the securities legislation in British Columbia will require insider reports to be filed within 10 days after a trade is made.

Issuer Profile Supplements

All SEDI issuers will be required to file a supplement to their SEDAR issuer profiles through SEDI. This filing, which is referred to as an issuer profile supplement, will require information about the SEDI issuer's outstanding securities as well as the name and contact information for an individual who will serve as an insider affairs contact for the SEDI issuer. The requirement to provide information for an insider affairs contact, which will be kept confidential by the securities regulatory authorities, represents a change from the Draft Instruments. This information is required to support notification to a SEDI issuer whenever an insider discloses a relationship to the SEDI issuer. This will assist each SEDI issuer in identifying any incorrect or inappropriate SEDI filings made in respect of the issuer.

The information required to be included in an issuer profile supplement is prescribed in Form 55-102F3. This Form, which was not included in the Draft Instruments, provides more detailed directions with respect to the information required to be included in an issuer profile supplement, including the insider affairs contact information discussed above. The information disclosed publicly in the issuer profile supplement will be used by insiders to help them complete insider reports using the online system. In particular, the issuer profile supplement will disclose the appropriate designation of each outstanding security or class or series of outstanding securities issued by the SEDI issuer. Insiders will select from these designations when filing insider reports, thereby ensuring accuracy and consistency in the reported information.

Upon implementation of SEDI on October 29, 2001, an existing SEDI issuer will be required to file an issuer profile supplement within five business days rather than the standard three day

requirement which will be mandated for issuers that become SEDI issuers after October 29, 2001. If a SEDI issuer distributes a security or class or series of securities that is not already disclosed in its issuer profile supplement, or if there is any change in the designation of any security or class of securities of the SEDI issuer disclosed in its issuer profile supplement, or if any such security or class of securities has ceased to be outstanding and is not subject to issuance at a future date, or if there is any other change in the information disclosed or required to be disclosed in the issuer profile supplement, including any change in a SEDI issuer's insider affairs contact, the SEDI issuer must file an amended issuer profile supplement in SEDI format immediately.

Issuer Event Reports

Every SEDI issuer must also file an issuer event report no later than one business day following the occurrence of an "issuer event", which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event that affects all holdings of a class of securities of the SEDI issuer in the same manner. Issuer event reports must include the information prescribed by Form 55-102F4. Issuer event reports will be displayed for the issuer's insiders in SEDI, thereby assisting these insiders to report changes in their security holdings resulting from issuer events.

Under National Instrument 55-101, insiders are exempt from the obligation to report a change indirect or indirect ownership of, or control or direction over, securities of a reporting issuer resulting from an "issuer event" provided that these changes are reported by the insider within the time prescribed by securities legislation for reporting any other subsequent change in direct or indirect ownership of, or control or direction over, securities of the reporting issuer.

Implementation Date

In the comments received on the Draft Instrument, various commentators expressed the view that the implementation timetable was too aggressive. For various reasons, implementation of electronic filing of inside reports in SEDI has taken longer than initially anticipated. The National Instrument now provides that insiders of SEDI issuers will be required to file insider reports electronically using SEDI commencing on November 13, 2001. This will provide SEDI issuers and their insiders with approximately four months to prepare for the transition to electronic filing.

Under this implementation schedule, any insider report filed on or after November 13, 2001 by or for any insider of a SEDI issuer must be filed in SEDI despite the date on which the trade took place.

However, as discussed below, the provisions requiring each SEDI issuer to prepare and file an issuer profile supplement within five business days will become effective on October 29, 2001. The CSA believes that this implementation schedule will allow SEDI issuers and insiders to make any necessary preparations for the transition to electronic filing.

Transition to Electronic Filing

In order to facilitate the transition to electronic filing, the requirement to file insider profiles, insider reports and issuer event reports electronically in accordance with the National Instrument will not arise until November 13, 2001, a period of two weeks from the effective date of the National Instrument. During this two week period, all insider reporting will continue in paper format and SEDI users will be encouraged to complete the user registration process described below. However, SEDI issuers will be subject to the issuer profile supplement filing requirements commencing October 29, 2001. Under the transitional provisions, existing SEDI issuers will have five business days from October 29, 2001 within which to register a representative as a SEDI user, if necessary, and to file their issuer profile supplements. This provides existing SEDI issuers with a longer time frame than the three business day requirement applicable to issuers that become SEDI issuers after implementation of the National Instrument.

Operation of SEDI

CDS INC. ("CDS"), the subsidiary of The Canadian Depository for Securities Limited currently operating SEDAR, has been appointed by the CSA to operate SEDI upon its implementation. SEDI will be available to receive filings 24 hours a day, seven days a week, subject to service interruptions for maintenance and other technical requirements.

User Registration

Currently, individuals in a variety of capacities are involved in filing insider reports in paper format with the securities regulatory authorities. Individual insiders, representatives of company insiders and lawyers or other agents are typically participants in the insider reporting process. In SEDI, any individual wishing to access the system to make a filing will be required to register with CDS in its capacity as system operator. Individuals will be able to register for this purpose by going to the SEDI web site and completing an online user registration form. The information required to be provided for user registration purposes is set out in Form 55-102F5. For security purposes, in order to complete the registration process, the individual user will also be required to sign a paper copy of the registration form and deliver the signed copy to CDS by prepaid mail, personal delivery or facsimile for verification. Under the National Instrument (and as indicated in the Companion Policy), the individual user must complete the registration process before that individual's filings will be considered valid.

Security Access Keys

In order to permit insiders and issuers that are required to file information in SEDI to control information filed by others on their behalf, it is proposed that SEDI will issue alpha-numeric access keys to insiders and issuers when their insider profiles or issuer profile supplements, respectively, are first created in SEDI. Thereafter, any filing of information in SEDI on behalf of an insider or issuer will require the use of the access key assigned to that insider or issuer. Insiders and issuers will be able to provide their access key to authorized representatives and filing agents from time to time to facilitate filing on their behalf but will be able to obtain a new access key at any time, thereby retaining ultimate control over those who are permitted to file information in SEDI on their behalf

Certification Requirements

The National Instrument does not require signatures on SEDI filings. However, the insider or any agent acting on the insider's behalf will be required to certify by electronic means that the information filed electronically in an insider profile or insider report is true and complete in every respect. In the case of a filing agent, the certification is based on the agent's best knowledge, information and belief.

Temporary Hardship Exemption

The National Instrument contains a temporary hardship exemption that will permit an insider of a SEDI issuer to comply with the insider reporting requirement by making a filing in paper format rather than in SEDI format if unanticipated technical difficulties arise in filing an insider report in SEDI format or if the SEDI issuer fails to file its issuer profile supplement on a timely basis. This exemption will require the insider to file initially in paper format within a prescribed timeframe and will also require the insider to make a SEDI filing once the technical difficulties have been resolved or the insider has become aware that the SEDI issuer has filed its issuer profile supplement. An insider report filed in paper format under the temporary hardship exemption must be prepared in accordance with Form 55-102F6 and may be submitted by facsimile.

SEDI Service Charges

Insiders will not be required to pay service charges to the SEDI operator for filing in SEDI. Rather, CDS will fund the start-up costs for SEDI and will recover these costs, as well as its operating costs, by means of an annual service charge applied by CDS to SEDI issuers that file documents through SEDAR. The annual service charge will vary, depending on the type of SEDI issuer. Single jurisdiction issuers will be charged \$250, multi-jurisdiction issuers will be charged \$750 and short form prospectus issuers will be charged \$2,500.

Paper Filing Regime

The National Instrument provides that insiders of non-SEDI issuers must continue to file insider reports in paper format. The existing form of insider report used in the CSA jurisdictions with insider reporting requirements has been adopted for this purpose and designated as Form 55-102F6. Minor changes have been made to the existing form to update it but no material changes have been made.

The National Instrument also deals with "transfer reports" that are required to be filed under certain provisions in the legislation of some jurisdictions in Canada. These reports, which are not covered by the definition of "insider reporting requirement" in National Instrument 14-101 Definitions, are required to be filed if an insider of a reporting issuer transfers securities of that issuer into the name of an agent, nominee or custodian. The National Instrument provides that this type of report, defined in the National Instrument as a "transfer report", must be filed in paper format on Form 55-102F6.

The National Instrument provides that insider reports and transfer reports filed in paper format maybe sent to the Commission by prepaid mail, personal delivery or facsimile. Certain provisions in the legislation of some jurisdictions in Canada (for example, Ontario's provision is section 109 of the Securities Act) which requires that an insider report be filed where voting securities are registered in the name of a person or company, other than the beneficial owner, who is known to be an insider (except where there was a transfer for the purpose of giving collateral for a genuine debt), is not affected by the Instruments and, consequently, any reports required to be filed under these provisions will continue to be filed in paper format.

Certain provisions in the legislation of some jurisdictions in Canada (for example, Ontario's provision is subsection 117(1) of the Securities Act) which requires a management company to file a report where there are certain transactions (e.g. a purchase, sale or loan) between a mutual fund and any related person or company, is not affected by the Instruments and, consequently, any reports required to be filed under this section will continue to be filed in paper format.

SEC Filers

It is noted that the National Instrument does not affect the operation of Part 17 of National Instrument 71 -101 *The Multijurisdictional Disclosure System* ("NI 71-101"). Part 17 of NI 71-101 provides that Canadian insider reporting requirements do not apply to an insider of a "U.S. issuer", as defined in NI 71 -101, that has a class of securities registered under section 12 of the United States Securities Act of 1934, as amended (the "1934 Act"), if the insider complies with the requirements of United States federal securities law regarding insider reporting and the insider files with the Securities and Exchange Commission of the United States ("SEC"), any insider report required to be filed under section 16(a) of the 1934 Act and any rules and regulations thereunder.

It is also noted that insiders of non-SEDI issuers that file forms prescribed by the SEC under existing securities commission rules, blanket orders or policies permitting the filing of these forms in lieu of the Canadian form of insider report may continue to file the SEC forms.

Federal Insider Reporting Requirements

It is noted that SEDI only supports filing under provincial securities legislation. Consequently, insider reports filed in SEDI may not satisfy insider reporting requirements under federal legislation if any such requirements are in force at the time SEDI is implemented.

Early Warning Reports/Alternative Monthly Reports

Early Warning Reports and Alternative Monthly Reports disclosing ownership of 10% or more of a class of equity securities of a SEDAR reporting issuer are currently required to be filed as documents in SEDAR and this will continue to be the case after SEDI is implemented. A link will be available in SEDI that will allow filers and the public to access Early Warning Reports and Alternative Monthly Reports displayed on the SEDAR web site. This is being provided because there is an exemption from the insider reporting requirements if an insider files an Early Warning Report or Alternative Monthly Report in respect of a particular transaction.

Public Access to Filings

The public will be able to access the following information from SEDI filings on the SEDI web site, except for certain confidential personal and other information as set out in the Companion Policy:

- (1) insider profiles;
- (2) summary reports of insider information, consisting of (a) insider profiles and (b) insider reports; and
- (3) information relating to SEDI issuers, consisting of (a) issuer profiles and supplements, and (b) issuer event reports.

Summary of Companion Policy and Changes to Companion Policy

The Companion Policy provides notice of the decision of the applicable securities regulatory authorities and regulators to refrain from disclosing certain personal or other information filed in SEDI by or on behalf of an insider. Information that will not be made publicly available includes the insider's address (including postal code but excluding municipality, province, territory, state and/or country), telephone number, facsimile number, e-mail address and any election to receive correspondence in French or English. The Companion Policy has been revised following publication of the Draft Policy to include reference to the primary purposes for the collection, use and disclosure of personal information in the context of insider reporting. This is intended to assist those using publicly available information filed under the National Instrument to determine whether the use of personal information included in such filings is permitted under the Personal Information Protection and Electronic Documents Act (Canada) and, in Québec, under the Act Respecting the Protection of Personal Information in the Private Sector, R.S.Q.,c. P-39.1. In Québec, any questions with respect to the protection of personal information of individuals may also be addressed to the Commission d'accès à l'information du Québec (1-888-528-7741, web site: www.cai.gouv.qc.ca).

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The Manitoba Securities Commission

August 15, 2001

**APPENDIX A
TO
NOTICE**

**NATIONAL INSTRUMENT 55-102,
FORMS 55-102F1, 55-102F2, 55-102F3, 55-102F4,
55-102F5 AND 55-102F6, COMPANION POLICY 55-102CP
SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI)**

LIST OF COMMENTATORS

The CSA received comments on the Instruments from the following commentators:

1. Tupper, Jonsson & Yeadon by letter dated July 12, 2000
2. International Northair Mines Ltd. by letter dated July 17, 2000
3. The Toronto-Dominion Bank by letter dated August 30, 2000
4. Security Transfer Association of Canada by letter dated September 8, 2000
5. Nortel Networks Corporation by letter dated September 13, 2000
6. Bridgeway Software Canada Inc. by letter dated September 14, 2000
7. Osler, Hoskin & Harcourt LLP by letter dated September 18, 2000
8. Canadian Bankers Association by letter dated September 19, 2000

**APPENDIX B
TO
NOTICE**

**NATIONAL INSTRUMENT 55-102,
FORMS 55-102F1, 55-102F2, 55-102F3, 55-102F4,
55-102F5 AND 55-102F6, COMPANION POLICY 55-102CP
SYSTEM FOR ELECTRONIC DISCLOSURE BY INSIDERS (SEDI)
SUMMARY OF PUBLIC COMMENTS AND CSA RESPONSES**

The CSA received comment letters on the Draft Instruments published in June 2000 from the eight commentators identified in Appendix A. The CSA thank all of them for their valuable comments. Their comments, and the CSA's responses, are summarized below.

1. General Comments

Several of the commentators expressed their support for the action taken by the CSA to implement electronic filing and dissemination of insider reports. Additional efficiencies and a more streamlined process for reporting insiders, improved access to disclosure for investors and harmonization of Canadian securities law requirements were among the reasons given by those expressing their support.

2. Mandatory Electronic Filing

Several of the commentators objected to the proposal to make electronic filing of insider reports through SEDI compulsory. Concern was expressed that insiders would not have computers or Internet access and, therefore, would be forced to have their insider reports filed electronically through their SEDI issuers. Concern was also expressed that mandatory electronic filing of insider reports will create additional burdens for directors of public companies, making it more difficult to attract qualified individuals.

The CSA believes that the full benefits associated with the implementation of an electronic filing system would only be achieved if substantially all insiders are required to file their insider reports electronically using the system. The CSA also notes that Internet access among Canadian adults in Canada is already at a very high level per capita and is growing rapidly. As well, Canadian reporting issuers have been filing under mandatory electronic filing requirements for several years and should be well positioned to assist insiders or to direct them to agents. Insiders who do not have access to the Internet can retain a lawyer or other agent to provide assistance.

The CSA also believes that SEDI will provide real benefits for directors and other insiders who become subject to mandatory electronic filing. Specifically, by filing an insider report in SEDI, an insider will satisfy the requirements of the securities legislation of all CSA jurisdictions that have insider reporting requirements. In addition, SEDI is able to provide automated processes that were previously manual (such as editing and validation checks) and produce exception reports (such as reports of late filings).

One commentator noted that the Electronic Commerce Act, 2000, (Ontario), which came into force on October 16, 2000, may support a legal argument that a person may not be mandated to use electronic technologies without that person's consent.

The CSA understands that the Electronic Commerce Act, 2000 (Ontario) has not been enacted for the purpose of preventing legislative bodies from mandating the use of electronic technologies where they are otherwise authorized to do so.

3. Costs Borne By Reporting Issuers

Several of the commentators expressed concerns about the additional costs to be borne by SEDAR reporting issuers to facilitate recovery of the costs of developing and maintaining SEDI. Some of these commentators expressed the view that the costs to be incurred would outweigh the anticipated benefits as outlined by the CSA in its Notice of the draft National Instrument.

The CSA believes that the benefits associated with electronic filing and dissemination of insider trading information will be significant, particularly in terms of the greater confidence in Canada's capital markets that will be instilled in the investing public through more timely and accurate dissemination of this information. In comparison to other jurisdictions such as the United States, there are fewer restrictions on the ability of insiders to trade securities of Canadian public companies. As such, the CSA believes that effective disclosure of insider trading activities in Canada is of paramount importance to the integrity of Canada's capital markets.

The CSA also notes that there have been reductions over the past year or so in the costs associated with filings under the securities laws in certain provinces and further reductions are contemplated. Costs are being rationalized as a result of the uniformity and harmonization that electronic filing systems have facilitated.

Concern was also expressed as to whether CDS would be reaping significant profits through increases in the amounts charged to SEDAR reporting issuers. The CSA has reviewed the proposed changes to the charges levied on SEDAR reporting issuers and believes that the amounts to be charged by CDS are appropriate to facilitate recovery of the costs of developing and operating the system.

4. Implementation Date

Several commentators expressed concern that the implementation date proposed in the Draft Instruments would not provide SEDI issuers and their insiders with sufficient time to prepare for the transition from paper filing to electronic filing.

For various reasons, implementation of electronic filing of insider reports in SEDI has taken longer than initially anticipated. The National Instrument now provides that insiders of SEDI issuers will be required to file insider reports electronically using SEDI commencing on November 13, 2001. This will provide SEDI issuers and their insiders with approximately four months to prepare for the transition to electronic filing.

Under this implementation schedule, any insider report filed on or after November 13, 2001 by or for any insider of a SEDI issuer must be filed in SEDI despite the date on which the trade took place. However, as discussed below, the provisions requiring each SEDI issuer to prepare and file an issuer profile supplement within five business days will become effective on October 29, 2001. The CSA believes that this implementation schedule will allow SEDI issuers and insiders to make any necessary preparations for the transition to electronic filing.

5. **Communication Program**

A few commentators suggested that the CSA should undertake a detailed communication program and provide training for SEDI issuers and their insiders.

The CSA is developing a communication program to assist insiders, issuers and agents in preparing for the implementation of SEDI. This will include securities commission bulletins and press releases which will be located on various securities commission web sites, as available. In addition, a detailed information package will be sent to SEDI issuers, prior to implementation, outlining what is required of each insider, issuer or agent when SEDI is implemented. This information package will contain information for distribution by SEDI issuers to their insiders.

6. **User Registration Procedures**

One commentator expressed concerns about the user registration process. One of these concerns related to the timeframe within which CDS, as system operator, would process the manually signed registration form delivered in paper format by facsimile or courier, particularly in circumstances where an insider report is being filed immediately following user registration.

The CSA recognizes the need to ensure that signed user registration forms delivered to CDS are processed as quickly as possible to facilitate acceptance of insider reports filed contemporaneously. The CSA has received assurances from CDS that procedures will be implemented to ensure that clearance of these signed registration forms will occur on a timely basis following receipt by CDS. The CSA believes that SEDI issuers and their insiders will have ample opportunity to meet their electronic filing requirements in circumstances where user registration is required.

7. **User Registration Form**

Two commentators noted that the SEDI User Registration Form 55-102F5 pertained only to individuals and suggested that this form be amended to accommodate the registration of corporations as users.

The CSA considered this possibility prior to initial publication of the draft National Instrument and rejected this approach for security related reasons. The CSA concluded that access to the SEDI system for filing purposes should be assigned on an individual by individual basis to ensure accountability. Form 55-102F5 does provide for a corporate name where an individual is acting in a representative capacity. However, the CSA does not want access codes being granted to corporations or other organizations for general use by its representatives as this could lead to significant accountability problems.

8. **Updating Insider Profiles**

Several commentators expressed concern that insiders of SEDI issuers would be required to amend their insider profiles within 10 days following any change in the information contained in the profile. It was noted that this was not required in the existing paper regime and that the requirement to update personal information did not seem to have the same import as reporting of trading activity. It was suggested that insiders should only be required to update their insider profiles at the time of filing an insider report. It was also suggested that insiders should only be required to amend their profile to update required information as opposed to optional information.

In order to address the concerns raised by commentators, the CSA has amended the requirement to file an amended insider profile within 10 days of any change in an insider's information. The new requirement is such that an insider will be required to file an amended insider profile in SEDI format within 10 days only upon a change in the insider's name or the insider's relationship with a SEDI issuer, or upon the insider ceasing to be an insider of a SEDI issuer, as disclosed in its most recently filed insider profile. In the case of a change in any other information in the insider profile, an insider will only be required to file an amended insider profile at the time the insider next files an insider profile or insider report in SEDI format.

9. **Multiple Insider Profiles**

One commentator asked whether SEDI would permit the creation of multiple profiles for an insider reflecting the insider's involvement with more than one SEDI issuer and/or more than one filing agent.

The CSA notes that the system has been designed to deter duplication of insider profiles and the attendant confusion and other adverse consequences associated with duplication of system information. As well, insiders or agents creating insider profiles will be assigned a security access key which may be provided to one or more authorized representatives or filing agents from time to time to facilitate filings made on behalf of the insider. This will permit insiders to appoint representatives from different SEDI issuers to manage filings on an issuer by issuer basis while at the same time permitting the insider to control access to the insider's profile. To clarify the matter, an express prohibition on the creation of more than one insider profile has been added to the National Instrument.

10. **Date and Time of Filing**

One commentator asked about the nature of the evidence to be provided to SEDI insiders that their electronic filings had been successfully completed. The commentator noted that, in the existing paper regime, an insider can maintain a copy of a faxed transmission record as evidence that a fax has been received at a securities commission office.

The CSA notes that the SEDI system will automatically record the date and time (in the Eastern time zone) that an insider report filed in SEDI has been received by SEDI. As stated in the final form of the Companion Policy, with the exception of the conditional filings discussed below,

insider reports and other information filed and submitted through SEDI will be considered filed with the securities regulatory authorities at the time and on the day in the relevant jurisdiction that the information is received by the SEDI server. Following receipt by SEDI of information filed electronically, SEDI will provide the filer with the ability to print a copy of the filed information showing the date and time of receipt by SEDI.

The CSA notes that insider reports filed by an individual who has not completed the SEDI user registration process will be considered conditional filings. So long as these filings remain conditional they will not be considered valid filings for purposes of securities legislation and until such time as the individual completes the registration process, will not be made accessible to the public.

One commentator questioned whether there would be confirmation of effectiveness of a conditional filing provided to a filer once a signed user registration form was delivered and verified by the SEDI operator.

The CSA notes that there will not be any specific notification provided to a filer regarding the effectiveness of a filing in these circumstances. However, the filer will be able to determine whether a conditional filing has become effective by monitoring the registration status of the individual using the online functionality available to registering users or by confirming that the filings made on a conditional basis have subsequently become accessible to the public on the SEDI website.

11. Explanatory Notes

One commentator expressed concern that the electronic form of insider report would not allow for submission of explanatory notes as schedules to insider reports. This commentator noted that detailed explanatory notes are required in certain circumstances to facilitate a better understanding of reported activities.

The CSA notes that the electronic form of insider report does provide a field within which additional information must be provided if necessary to facilitate accurate reporting of the position or trade that is the subject of the report. The CSA believes that adequate space is available for additional comments of the type appropriate in insider reports. The CSA intends to monitor the use of the applicable field in SEDI to ensure that there is adequate space for reporting purposes.

12. Online Help

One commentator indicated that it would be desirable to have a user friendly system that provides online help to filers. The commentator also recommended publication of a user guide which provides detailed instructions on the procedure for using the SEDI system.

The web site will have an online help feature that will assist filers to create, file and amend the various profiles and reports. Online screen text will assist the public to search and obtain information from SEDI.

13. Temporary Hardship Exemption

Two commentators suggested that the scope of the temporary hardship exemption should be expanded as there may be circumstances other than technical difficulties in which an insider may need recourse to a temporary hardship exemption from electronic filing, including illness, physical disability or lack of access to a personal computer or the Internet.

The CSA believes that the electronic filing system will place insiders in a better position to satisfy their reporting obligations than is currently the case under the paper-based reporting system. Most examples of the types of “hardships” given by the commentators could be impediments to filing under any system. The fact that an insider will be able to report wherever a computer with Internet access is available greatly increases the insider’s ability to satisfy the requirements even in difficult circumstances. If an insider is unable to access a computer or the Internet for the types of reasons noted by the commentators, the required information could be communicated to someone with such access who could act on the insider’s behalf.

The final form of the National Instrument does contain an additional situation, namely, where the reporting issuer has failed to file its issuer profile supplement on a timely basis.

14. Direct Electronic Filing

One commentator that is a producer of software which automates the insider reporting process expressed concern that currently there are no plans to allow for direct electronic filing input with the SEDI system as output from a software program in a standardized format. This commentator suggested that the proposed system, which requires individual filing, will prove cumbersome to corporate administrators who may currently process filings on behalf of their companies’ insiders using software designed for this purpose.

The CSA did consider the need to develop a system on a basis that would facilitate direct filings from a software program providing output in a standardized format. The CSA concluded that it would be much more costly to introduce this additional functionality into the system and that the additional cost would significantly outweigh the additional benefit given the relatively limited extent to which the CSA believes this additional functionality would be used. The CSA will assess feedback received on the use of the new system with a view to ensuring that it is generally meeting the needs of filers.

15. Issuer Event Reporting

One commentator expressed concern with the provision in the draft National Instrument that will require SEDI issuers to file notice of an issuer event. This commentator noted that this was a new requirement for reporting issuers. Currently, issuers need only file information concerning an issuer event as a means of relieving insiders from their filing obligations in respect of these events. The commentator enquired whether there would be penalties if a SEDI issuer failed to make these filings.

The CSA acknowledges that the issuer event report is a new requirement for SEDI issuers but notes that, prior to implementation of National Instrument 55-101 *Exemption from Certain Insider Requirements*, many issuers were filing information about issuer events to relieve their insiders from the reporting requirements. The CSA believes that issuer event reporting is an appropriate responsibility to place on issuers in view of the fact that their action is precipitating a change in the insider's holdings and they have the information required by insiders to fulfil their reporting obligations. If a SEDI issuer fails to comply with the issuer event reporting requirements following implementation of the National Instrument, it will be subject to penalties under securities legislation in certain jurisdictions for contravention of the National Instrument.

16. Public Availability of Issuer Event Reports

One commentator expressed concern about potential confusion resulting from issuer event reporting, to the extent that insiders would still need to report the changes resulting from the issuer event. This commentator noted that a change in security holdings resulting from an issuer event is currently not reportable until the next time that the insider is required to file a report. The commentator queried whether the new requirements would lead to a duplication of reporting information as well as an acceleration of the reporting requirement in the circumstances.

The CSA is satisfied that the new requirements will not lead to confusion by the public as to the consequences of issuer event reporting coupled with insider reporting. Although issuer event reports will be accessible by the public, this information will be disseminated in a manner that will permit those viewing an insider's holdings to determine whether they have been adjusted for a particular issuer event. The CSA notes that National Instrument 55-101 now permits insiders to report changes resulting from certain issuer events at the time of their next required insider report. Accordingly, the issuer event reporting requirements do not require insiders to report any earlier than is the case under the current paper-based reporting system.

17. System Capacity

One commentator enquired whether the CSA or CDS have estimated the potential capacity of the system to handle the load that could potentially result if the system is accessible by all of the insiders of Canadian public companies. The commentator enquired whether there is an alternative "service provider" model in place if the system is unable to cope with the volume of transactions that may be experienced.

The ability of SEDI to manage the anticipated volume of transactions has been addressed in a number of ways. The system's capacity requirements are based on the total volume of insider reports filed in 1999 with the CSA, as well as information relating to the use of the existing SEDAR system, including use of the SEDAR web site used to disseminate SEDAR filings to the public. The SEDAR information used to determine capacity requirements covers both filing and public access patterns. Capacity requirements based on this information were increased to allow for both anticipated and unanticipated growth.

CDS and the CSA have also made every effort to ensure that the SEDI system infrastructure is scaleable so that the capacity can easily be increased when required without the need to redesign

the application. CDS and the CSA will validate the system capacity requirements through performance testing prior to implementation.

18. Federal Filings

One commentator noted that it is unfortunate that the proposed new system will not facilitate the filing of insider reports required under federal legislation, such as the *Canada Business Corporations Act* (“CBCA”). This commentator noted that an insider of an issuer subject to federal insider reporting requirements would still have to file reports in paper format in addition to electronic format.

The CSA notes that amendments to the CBCA have been proposed that will eliminate this duplication for insiders of CBCA companies. However, there is no assurance that the amendments will become effective prior to the implementation of SEDI. The CSA believes that it is not in the public interest to delay implementation of SEDI in the circumstances.

19. Third Party Derivatives

Two commentators expressed concern about the provisions of Form 55-102F2 dealing with third party derivatives. One of the commentators expressed the view that reporting of transactions in third party derivatives is not required of insiders under the *Securities Act* (Ontario) (the “Ontario Act”) on the basis that such derivatives are not “securities of the reporting issuer” within the meaning of subsections 107(1) and 107(2) of the Ontario Act.

The CSA notes that subsection 106(2) of the Ontario Act deems the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security to be a change in the beneficial ownership of the security to which it relates. The securities legislation in other jurisdictions contains similar provisions and in some cases the provisions are broader. For example, subsection 87(6) of the *Securities Act* (British Columbia) provides that a put, call option or other right or obligation to purchase or sell securities of a reporting issuer must be reported by insiders of the reporting issuer. These statutory provisions do not limit insider reporting of transactions in derivatives to circumstances where the derivatives have been issued by the reporting issuer itself. The CSA is of the view that derivatives issued by third parties, including both exchange-traded and over-the-counter derivatives, are subject to insider reporting requirements in the circumstances contemplated by the applicable statutory provisions. The CSA further notes that the National Instrument and Form 55-102F2 do not create insider reporting requirements but rather prescribe the content of the reports and the manner in which they are required to be filed if there is a filing obligation.

The same commentator also noted that the term “derivative security” is not defined in the National Instrument or Form 55-102F2.

After considering this comment, the CSA has decided to include definitions of “issuer derivative” and “third party derivative” in Form 55-102F2 and to substitute these defined terms in place of the term “derivative security”. The new definitions are as follows:

“issuer derivative” means a derivative issued by the reporting issuer to which the insider reporting requirement relates;

“third party derivative” means a derivative issued by a person or company other than the reporting issuer to which the insider reporting requirement relates;

The CSA does not propose to define “derivative” for purposes of Form 55-102F2 as the term is already defined generally for purposes of the securities legislation in certain jurisdictions.

Finally, two commentators expressed concern with respect to paragraph 19 (now paragraph 25) of Form 55-102F2 which requires disclosure of the expiration date of a derivative, if applicable. The commentators expressed the concern that one of the counterparties to a reported derivatives transaction would frequently be looking to unwind a hedge at an efficient price at or about the maturity date of the derivative. As a result, requiring disclosure of the maturity date would provide participants in the marketplace with information enabling them to interfere with the ability of a counterparty to unwind its hedge efficiently. One of the commentators noted that, while insider reporting requirements in the United States require disclosure of the expiration date of a derivative, the markets for public company securities in the United States are more liquid than markets for securities of Canadian reporting issuers with the result that the potential for interference with a counterparty unwinding a hedge is much greater in the Canadian markets.

The CSA do not believe that this is a reason to suppress information relating to insider dealings that affect the insider’s holdings of the securities of the issuer of which they are an insider. Moreover, the fact that this type of information may be material to investors and other participants in the marketplace is reason for requiring disclosure of the information in insider reports. Accordingly, the CSA believes that a change to the disclosure required by Form 55-102F2 is unwarranted.